

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

MONTE LUFFEY AND ANGELE LUFFEY

PLAINTIFFS

V.

CIVIL ACTION NO. 1:06cv901-LTS-MTP

STATE FARM FIRE AND CASUALTY COMPANY

DEFENDANT

ORDER

Defendant State Farm Fire and Casualty Company (State Farm) has filed a [7] Motion to Strike Allegations of Fraud in Plaintiffs' [1] Complaint. State Farm relies on the heightened pleading standard of Fed. R. Civ. P. 9(b) to support its position.

Rule 9(b) dictates that "[i]n all averments of fraud . . . , the circumstances constituting fraud . . . shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally." The [1] Complaint makes passing references to "fraudulent" conduct in the same breath as intentional or negligent breach of contract are mentioned.

The allegations are apparently not so deficient that State Farm could not frame a rather lengthy [6] Answer. It would have been more appropriate, for example, for State Farm to have resorted to Fed. R. Civ. P. 12(e)'s allowance of a motion for a more definite statement instead of seeking what amounts to a dismissal of certain claims. *See, e.g., United States ex rel. Williams v. Bell Helicopter Textron Inc.*, 417 F.3d 450 (5th Cir. 2005); *United States ex rel. Adrian v. Regents of the University of California*, 363 F.3d 398 (5th Cir. 2004); *Sisk v. Texas Parks and Wildlife Dept.*, 644 F.2d 1056 (5th Cir. 1981). At this early stage of the litigation, the Court will not strike these allegations of fraud.

Accordingly, **IT IS ORDERED:**

State Farm's [7] Motion to Strike Allegations of Fraud is **DENIED**.

SO ORDERED this the 6th day of December, 2006.

s/ L. T. Senter, Jr.
L. T. Senter, Jr.
Senior Judge